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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/024,269	12/18/2001	Richard J. Chouinard	ERIE / 73	4951
26875	7590	03/10/2005	EXAMINER	
WOOD, HERRON & EVANS, LLP 2700 CAREW TOWER 441 VINE STREET CINCINNATI, OH 45202			NAGPAUL JYOTI	
			ART UNIT	PAPER NUMBER
			1743	

DATE MAILED: 03/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/024,269

Applicant(s)

CHOUINARD ET AL.

Examiner

Jyoti Nagpaul

Art Unit

1743

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 December 2004.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 45-52 and 58-60 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 45-52 and 58-60 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

4. **Claims 45-52 and 58-60** are rejected under 35 U.S.C. 103(a) as being unpatentable over JP 52 118390 (Herein '390') in view of Davis.

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5. With respect to **Claim 45**, 390 discloses an IC wafer transporting container includes a bottom box (2), lid (1), and a rack (Refer to Fig. 1). The bottom box (2) is composed of a base with four walls. (2, Refer to Fig.1)(Line 8, pg. 3 in specification) 390 further discloses a rack (refer to Fig. 5) located in the bottom box (2). The frame of the rack consists of first and second sides (Refer to Figure 1). The opposing ends of the first and second side are connected. The first side includes a first support bar (3), the edge is connected to an inner surface of the first side (8) to cantilever the support bar from the first side (8). The first support bar (3) deflects with respect to the first side (5), and the first opening for supporting one end of a slide. (Refer to Fig. 4) The second side contains a second support bar (3), the edge is connected to an inner surface of the second side (8) to cantilever the second support bar from the first side (8). The second support bar (3) deflects with respect to the second side (5), and a second opening for supporting the opposite end of the slide. (Refer to Fig. 4). 390 further discloses a cover/lid (1) with a projection (18) on the inner surface. The projection (18) includes on rib extending perpendicular to the plane of the slide as shown in Figure 4. The lid is positionable on the bottom box (2) to cause the projection (18) on the cover to press against the slide and deflect the support bars (3) to secure the slide between the rack and the cover (1). (Refer to Fig. 4)

6. 390 fails to disclose a similar rack in structure as the claimed invention and of the pair of openings is diamond shaped with two opposed corners of the diamond shape. (Fig. 4) 390 further fails to disclose substantially planar and opposed first and

7. Davis discloses a frame (1) for supporting frangible sheet material. (Refer to Fig. 1) Davis discloses a rack (1) comprising of a frame with first (18) and second sides (19). The opposing ends of the rack are connected by a rod (14). The rack (1) includes a first support bar (17, Figure 2) and a second support bar (Figure 2). The first support bar comprises of a first opening for supporting one end of a slide (5). The second support bar comprises of a second opening to support the opposite end of the slide (5, Figure 2). The frame further comprises of first (13) and second holes (14). The first and second holes are connected at the ends of the frame in order to facilitate picking up and carrying the rack.

8. With respect to **Claim 46**, 390 and Davis both disclose the first and second support bars angles downward from a respective inner surface toward lower edges of the opposed ends of the frame. The first and second support bars form an acute angle with the respective inner surface. (390, Fig. 4) (Davis, Fig. 1)

9. With respect to **Claim 47**, 390 does not specifically teach diamond shaped openings. However, Davis discloses each of the pair of openings is diamond shaped with two opposed corners of the diamond shape. (Fig. 4)

10. With respect to **Claims 49 and 50**, 390 discloses a first latch (8) on the base and a second latch (20) on the frame thus on positioning the rack within the base, the first and second portions are placed in juxtaposition to releasably secure the rack in the base.

11. With respect to **Claim 51**, 390 discloses a projection (18) includes on rib extending perpendicular to the plane of the slide as shown in Figure 4.

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12. With respect to **Claim 52**, Davis discloses the frame further comprises of first (13) and second holes (14). The first and second holes are connected at the ends of the frame in order to facilitate picking up and carrying the rack.

13. With respect to **Claims 58-60**, Davis discloses the slide case further comprises a bag containing the cover positioned on the base containing the rack and the bag comprises a aluminum vacuum sealed barrier bag.

It would have been obvious to one of the ordinary skill in this art at the time of the invention by applicant to modify the system of 390 such that the pair of openings is diamond shaped with two opposed corners of the diamond shape as disclosed by Davis it is desirable to minimize contact between the slides and the support bars in order to protect the slides from chipping and thus making it cost effective. It would also have been obvious to on of the ordinary skill in this art at the time of the invention by applicant to modify the system of 390 such that the frame further comprises of first (13) and second holes (14) which are connected at the ends of the frame in order to making it easier in picking up and carrying the rack during transportation and thus making it cost effective.

Response to Arguments

14. Applicant's arguments filed December 22, 2004 have been fully considered but they are not persuasive.

With respect to Claim 45, applicant recites "a rack having a frame with substantially planar and opposed end walls" and "a frame having planar end walls with ends rigidly connected to ends of planar side walls", in response to applicant's remark, it

would have been obvious to one of the ordinary skill in this art at the time of invention by applicant to provide rigidly connected end walls to the side walls to the rack of Davis in order to accommodate one size of slides.

With respect to Claim 45, applicant recites "rack is removably positionable with a base having a cover", in response to applicant's remark, the rack of Watanabe is fixed to a box by rivets, and technically this rack is removable if the rivets are removed. According to *In re Dulberg*, 289 F.2d 522, 523, 129 USPQ 348, 349 (CCPA 1961) (The claimed structure, a lipstick holder with a removable cap, was fully met by the prior art except that in the prior art the cap is "press fitted" and therefore not manually removable. The court held that "if it were considered desirable for any reason to obtain access to the end of [the prior art's] holder to which the cap is applied, it would be obvious to make the cap removable for that purpose.")

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of


the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jyoti Nagpaul whose telephone number is 571-272-1273. The examiner can normally be reached on Monday thru Friday (8:00-4:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on 571-272-1267. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

JN


Jill Warden
Supervisory Patent Examiner
Technology Center 1700